

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MICHAEL WEST,)
)
Petitioner,)
)
vs.) **Case number 4:06cv0903 RWS**
) **TCM**
ALAN B. STAHL,)
)
Respondent.)

MEMORANDUM AND ORDER

Pending in this 28 U.S.C. § 2254 action is the motion of petitioner, Michael West, for a default judgment against Respondent for failure to comply with an order directing him to show cause within forty-five days why the habeas relief requested by Petitioner should not be granted.

This show cause order was entered on July 12, 2006; the response was due on August 25. That same day, Petitioner signed his motion for a default judgment.

In considering this motion, the undersigned finds the following holding of the Seventh Circuit Court of Appeals in **Bleitner v. Welborn**, 15 F.3d 652 (7th Cir. 1994), persuasive:

A default judgment is a sanction, and a sanction should be proportionate to the wrong. Releasing a properly convicted prisoner or imposing on the state the costs and uncertainties of retrying him, perhaps many years after the offense, is apt to be a disproportionate sanction for the wrong of failing to file a timely motion for an extension of time. This thinking informs the principle that default judgments are disfavored in habeas corpus cases.

Id. at 653. See also **Hale v. Lockhart**, 903 F.3d 545, 548 (8th Cir. 1990) ("Were we to grant [the petitioner's] habeas petition without reaching the merits, it would be the public at large that would be made to suffer, by bearing either the risk of releasing prisoners that in

all likelihood were duly convicted, or the costly process of retrying them.") (interim quotations omitted) (alteration added).

A default judgment is a disproportionate sanction to a failure to respond to the Court's show cause order. There has, however, been no entry of appearance on behalf of Respondent.

Accordingly,

IT IS HEREBY ORDERED that Petitioner's motion for default judgment is **DENIED**. [Doc. 5]

IT IS FURTHER ORDERED that Respondent is to, within **twenty** (20) days of the date of this Order, show cause why the requested habeas relief should not be granted or file a motion for extension of time showing good cause why he has failed to comply with the show cause order.

/s/ Thomas C. Mummert, III
THOMAS C. MUMMERT, III
UNITED STATES MAGISTRATE JUDGE

Dated this 21st day of September, 2006.